

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas	) ) ) ) ) ) )	WC Docket No. 07-97
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**COVAD COMMUNICATIONS GROUP,  
NUVOX COMMUNICATIONS AND XO COMMUNICATIONS, LLC  
RESPONSE TO PETITION TO MODIFY PROTECTIVE ORDER**

Covad Communications Group, NuVox Communications, and XO

Communications, LLC (referred to herein jointly as “Commenters”), by their attorneys, hereby file their comments in response to the Petition to Modify Protective Order filed by Qwest Corporation (“Qwest”) in the above-captioned proceeding on June 29, 2007.<sup>1</sup> Qwest asks the Commission to revoke the *Second Protective Order*<sup>2</sup> and to proceed under the *First Protective Order*,<sup>3</sup> with the understanding that Highly Confidential Documents would be subject to the copying prohibition contained in Paragraph 10 of the *First Protective Order*.<sup>4</sup> Qwest maintains

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<sup>1</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Petition to Modify Protective Order (filed Jun. 29, 2007) (“*Petition*”).

<sup>2</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, First Protective Order (Jun. 1, 2007) (“*First Protective Order*”).

<sup>3</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Second Protective Order (Jun. 1, 2007) (“*Second Protective Order*”).

<sup>4</sup> *Petition*, at 1.

that progressing in this manner would afford all parties “more than adequate protection against the disclosure of competitively-sensitive information.”<sup>5</sup>

Qwest contends that the *Second Protective Order* imposes an undue burden and unnecessary expense on Qwest and other parties by requiring the retention of outside counsel and outside experts to review Highly Confidential information.<sup>6</sup> Qwest notes that it is not currently represented by outside counsel in this proceeding and, if the *Second Protective Order* remains in effect, it will be forced “to retain outside counsel and outside consultants *solely for the purpose* of reviewing highly confidential information.”<sup>7</sup> Qwest asserts that it should not be required to incur the expense of retaining outside counsel and consultants to review Highly Confidential data “just to satisfy an unfounded and unexplained fear that somehow highly confidential information produced to in-house counsel will be shared with the wrong persons.”<sup>8</sup> In order to “allay any fears that highly confidential information could be misused,” however, Qwest consents to a restriction that would prohibit any persons “engaged in developing, planning, marketing, or selling products or services, determining the costs thereof, or designing prices thereof to be charged or potentially charged to customers” from “viewing confidential information.”<sup>9</sup>

Despite serious reservations regarding the veracity of Qwest’s contention that the obligation to retain outside counsel and consultants to view Highly Confidential information imposes an “undue burden,” the Commenters do not oppose Qwest’s request that the Commission permit in-house counsel, analysts, and economists for parties in this proceeding to view all confidential data – including Highly Confidential information – so long as in-house

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, at 1-2.

<sup>7</sup> *Id.*, at 2 (emphasis in original).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*, at 3.

personnel with responsibility for developing, marketing, or selling products or services, including developing the costs or prices thereof, and in-house personnel involved in strategic planning and development, continue to be prohibited from viewing such confidential information. The Commenters object, however, to Qwest's proposal that all Highly Confidential information automatically be subject to a prohibition against copying, as the Commenters understand that ban would be interpreted by Qwest. A blanket copying ban – as interpreted by Qwest – would serve to insulate critical market data from full review and analysis.

The Commenters understand that Qwest interprets the current prohibition against copying contained in Paragraph 9 of the *Second Protective Order* to permit it to deny authorized persons (*i.e.*, individuals signing the *Second Protective Order* Acknowledgment of Confidentiality) a written or electronic version of documents designated Highly Confidential and to compel authorized persons desiring to gain access to such Highly Confidential materials to view such materials at Qwest's Washington, DC offices.<sup>10</sup> The Commenters do not object to a restriction on the copying of Highly Confidential documents by the requesting party. The Commenters strenuously object, however, to an interpretation of the copying restriction that would prohibit authorized persons from obtaining a written or electronic version of Highly Confidential materials. Such a restriction would result in critical market-specific data being shielded from full review, analysis and comment by interested parties.

It is reasonable to expect that as this proceeding progresses Qwest will submit additional data regarding the state of competition in each of the four Metropolitan Statistical Areas ("MSAs") for which it is seeking forbearance and that this additional data will be provided

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<sup>10</sup> Outside counsel representing the Commenters were denied a written or electronic version of Qwest's Highly Confidential Exhibit 2 to the Declaration of Robert H. Brigham and David L. Teitzel which accompanied Qwest's Petitions. Access to Exhibit 2 was limited to viewing by outside counsel at Qwest's Washington, DC offices.

on a wire center-specific basis. Indeed, as Qwest is no doubt aware based on its experience in the Omaha forbearance proceeding, data showing competitive activity on a wire center-by-wire center basis is essential to the Commission's determination of whether the Section 10 forbearance standard has been met by a party seeking forbearance from Section 251(c)(3) unbundling obligations. This additional data likely will be voluminous, consisting of hundreds of pages containing thousands of numbers.<sup>11</sup> If access to this additional data is limited to viewing at Qwest's offices, it will be very difficult for interested parties to fully examine it and impossible for them to evaluate or interpret it and draw any conclusions. Importantly, Verizon, the other party currently seeking forbearance from Section 251(c)(3) unbundling requirements for multiple MSAs,<sup>12</sup> recognizes that reviewing parties need access to written or electronic versions of all confidential (*i.e.*, Confidential and Highly Confidential) materials. Verizon has provided authorized persons written and/or electronic versions of all Confidential and Highly Confidential materials.

The Commenters maintain that clarification of the rules in this proceeding governing access to confidential information is necessary to ensure that interested parties are afforded an adequate opportunity to review and analyze crucial market information designated Confidential or Highly Confidential by the submitting party. The Commission should clarify that all authorized persons are to be afforded a written or electronic version of any document

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<sup>11</sup> The pending Verizon 6-MSA forbearance proceeding provides a good illustration of what can be expected assuming Qwest produces wire center level data for the Denver, Minneapolis-St. Paul, Phoenix and Seattle markets. *See In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. Section 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172. There, Verizon filed hundreds of pages of detailed wire center-specific figures to support its requests for forbearance in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach MSAs.

<sup>12</sup> *See In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. Section 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172.

labeled Confidential or Highly Confidential by the submitting party. If the submitting party wishes to restrict copying of the written or electronic Confidential or Highly Confidential document provided to the authorized representative of the reviewing party, however, the submitting party may do so by including the legend "Copying Prohibited" on the document. In this manner, reviewing parties will be afforded sufficient access to confidential materials to ensure a full and fair opportunity for inspection and analysis and, at the same time, submitting parties will be protected against unauthorized disclosure of particularly sensitive information.

Respectfully submitted,

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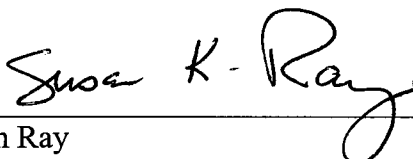
**CERTIFICATE OF SERVICE**

I, Susan Ray, hereby certify on this 9<sup>th</sup> day of July 2007, that copies of the foregoing Response to Petition to Modify Protective Order were served via first-class mail, postage prepaid, on the following:

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